

United Kingdom Launches New Immigration Points-Based System and Measures to Prevent Illegal Employment

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Points-Based System

On February 29, 2008, the government of the United Kingdom launched a new points-based system (PBS) intended to control migration, tackle migration abuse, and identify skilled workers. PBS, which is being implemented in phases, replaces more than 80 current methods of entering the United Kingdom. The new five-tiered system awards points to reflect skill, experience, age, and market demand. To qualify, an individual must earn a certain number of points in various categories that vary, depending upon the appropriate tier.

The five tiers are:

- **Tier 1: Highly Skilled Workers** (replaces the Highly Skilled Migrants Programme (HSMP))
Divided into four separate categories that include investors, entrepreneurs, highly skilled workers, and post-study workers. Individuals are free to seek employment anywhere in the UK. Applications to switch into the “highly skilled workers” category from within the UK, or to extend current HSMP applications, have been accepted since February 29, 2008. Applications under the remainder of Tier 1 will be phased in beginning April 2008.
- **Tier 2: Skilled Workers With A Job Offer**
Divided into four categories, including general skilled workers and intracompany transfers. Applications will be accepted beginning autumn 2008.
- **Tier 3: Low-Skilled Workers to Fill Specific Temporary Labor Shortages**
This tier is currently suspended.
- **Tier 4: Students**
Applications will be accepted beginning spring 2009.
- **Tier 5: Youth Mobility And Temporary Workers**
Applications will be accepted beginning autumn 2008.

Sponsorship Duties

Organisations wishing to sponsor individuals under the new Points-Based System must meet all requirements in record-keeping, reporting, and compliance to ensure UK Border and Immigration Agency (BIA) cooperation, as well as meeting tier-specific sponsorship duties. In order to participate in PBS, employers must apply for a license online and submit hard copy supporting documents within 14 days of submitting the online application. If the application is approved, a four year license is granted and the employer is added to the register of sponsors, allowing them to apply for a certificate of sponsorship for migrants in Tiers 2–5 (applicants in Tier 1 do not require a certificate of sponsorship). Each certificate of sponsorship will be assigned a reference number, which the prospective employee will take to the nearest British Consulate when applying for UK entry clearance.

Employer pledges and obligations when issuing a certificate of sponsorship include:

- Maintaining documentation relating to the foreign national employee, including contact details and copies of work eligibility documents
- Compliance with express reporting duties, including informing the BIA of any significant change in the migrant's circumstances, or failure to report to work for 10 days or more without permission
- Cooperation with the BIA, including ensuring that the migrant may lawfully work in the United Kingdom, and issuing certificates only to migrants who meet the criteria of the relevant tier

Sponsorship licenses may be withdrawn or downgraded if an employer fails to comply with these duties.

Measures to Prevent Illegal Immigration

Implementation of the first phase of PBS was accompanied by the introduction of a new, tougher system of employer liability relating to hiring illegal workers, which includes civil and criminal penalties, and ongoing obligations to monitor and review the personal details (home address, phone number, etc.) of those working in the United Kingdom who require employment permission. In addition to the prior requirements, which included asking prospective employees for original documents proving UK work eligibility and ensuring these were valid, employers must also:

- Retain copies of all documents produced by workers that demonstrate entitlement to work in the UK, for a period of at least two years from the date of termination of employment
- Verify at least once a year that each individual continues to be entitled to work in the UK, keep a record of such and any further documents produced

Employers who employ illegal workers could face a maximum civil fine of £10,000 per illegal worker. In addition, if employers are found to have knowingly hired illegal workers, the penalty is a maximum two year prison sentence and/or an unlimited fine. Employers who can demonstrate compliance with the duties above will be excused from any penalty.

How This Affects You

The online system for employers who wish to register as sponsors of Tier 2 skilled workers and intracompany transfers is now active. For more information, go to:

<http://www.bia.homeoffice.gov.uk/employers/points/applying/>. However, we recommend that employers wait to apply as Tier 2 sponsors until the final details of Tier 2 are published later this month.

We recommend that employers take the steps below to comply with the new measures:

- Build checks into the recruitment procedures and implement in a non-discriminatory way
- Take all necessary steps to verify specific documents during the recruitment process
- Copy and retain all documents provided
- Create a system to ensure migrant workers' documents are verified annually and are valid
- Ensure that all migrants who are issued certificates of sponsorship immediately notify the company of any change in their name, address, phone number, next of kin, etc.

More information on complying with the law to prevent illegal workers can be found at:

<http://www.bia.homeoffice.gov.uk/employers/preventingillegalworking/>.

Morgan Lewis will continue to monitor this situation and will update you on any new information. If you have any questions about any of the issues raised in this Morgan Lewis Immigration Alert, please contact:

London

Simeon Spencer +44 (0)20 3201 5520
 Rachel Ashwood +44 (0)20 3201 5557
 Kirsten Fox +44 (0)20 3201 5559

simeon.spencer@morganlewis.com
rashwood@morganlewis.com
kfox@morganlewis.com

San Francisco

A. James Vázquez-Azpiri 415.442.1343
Lance Nagel 415.442.1345

ajvazquez@morganlewis.com
lnagel@morganlewis.com

Washington, D.C.

Eleanor Pelta 202.739.5050
Eric S. Bord 202.739.6040

epelta@morganlewis.com
ebord@morganlewis.com

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